IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 848 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIBHAI RAMJIBHAI CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

MR KISHOR M PAUL for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1

MR PREMAL R JOSHI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 12/07/2004

ORAL JUDGEMENT

1.0 In this petition the petitioner has prayed for a direction directing the respondents to pay arrears of pension from 1.2.1996 onwards along with interest at the rate of 18% per annum. The petitioner has also prayed

for a direction to pay pension to him regularly. By way of amendment the petitioner prayed for quashing the order dated 27.2.2003 passed by the respondent no.2 rejecting the claim for pension.

2.0 The petitioner was originally engaged as a daily wager in the year 1978 and subsequently he was made as Work Charge Labour. Thereafter, pursuant to the Government Resolution dated 17th October 1988, the petitioner was made permanent with effect from 1.10.1988. The petitioner retired from service on 31st January 1996. According to the appointing Authority of the petitioner, the petitioner had put in 18 years of service and in view of the Circular dated 17.10.1988 the petitioner made a representation to the respondent no.2 for pensionary benefits. Since the respondent no.2 had not considered the said representation, the petitioner approached this Court by filing Special Civil Application No.12265 of 2001. This Court vide order dated 26.12.2001 directed the respondents to consider the case of the petitioner regarding his pension. However, the respondent has turned down the request of the petitioner and therefore the present petition was amended challenging said order.

3.0 Learned counsel for the petitioner submitted that the petitioner is entitled to get pensionary benefits as per the Circular dated 17.10.1988. He further submitted that the Appointing Authority had confirmed by its order that the petitioner had worked for 18 years in the service of the respondents and therefore the petitioner is entitled to get the benefits of pension.

4.0 Mr. Premal Joshi, learned counsel for the respondent no.2 submitted that when the petitioner retired from service, he had not completed ten years of service as a permanent employee and therefore he is not entitled for pension and other consequential benefits. He submitted that before taking a decision in the matter the District Panchayat sought clarification from the office of the Assistant Superintendent,Local Treasury Office, Rajkot and as per their advice the petitioner is not entitled for the pension.

5.0 As against the above submission, learned counsel for the petitioner relied upon a decision of this Court in the case of Tribhovanbhai Jerambhai Vs. Dy. Executive Engineer, Sub Division, R & B. Department, reported in 1998 (2) GLR 1. In para 9 of the said decision it is held that once a daily rated workman is treated to be permanent under the resolution dated

17.10.1988, his entire continuous service from the date of entry until he retires including his services rendered prior to the date of his regularization is taken into consideration for the purpose of computing pension or making pension available to such retired employee. Therefore, the plea of the respondents that the services rendered by the petitioner prior to his confirmation in service cannot be taken into consideration has no merit inasmuch as the petitioner has also relied upon the same Resolution.

6.0 Learned counsel for the petitioner has also submitted that the retiral benefits were denied to the petitioner due to the fault on the part of the respondents and therefore the petitioner is entitled to get interest on the arrears of the amount to be paid to the petitioner. In this behalf he relied upon a decision of the Apex Court in the case of Baiji Nath Gupta Vs. State of Bihar and others, reported in (1996) 10 SCC 297 (= 1997 SCC (L&S) 71), wherein it is held that if the pension was not determined in accordance with the rules on account of any laches or grounds on the part of the appellant, the appellant obviously would not be entitled to payment of interest for the delayed payment of pension and if the Government was responsible for the delay, necessarily the appellant would be entitled to the payment of interest on the delayed payment. He submitted that similar view has been taken by the Apex Court in the case of (1) Uma Agrawal Vs. State of UP, reported in AIR 1999 SC 1212 (199) 3 SCC 438: 1999 SCC (L&S) 742: (1999)2 CLR 156: (1999) 2 SLR 22: (1999)1 LLJ 1335), (2) Vijay L. Mehrotra Vs. State of U.P. and others, reported in (2001) 9 SCC 687 (=2000 Lab IC 2663: (2000)2 LLJ 253: (2000)3 LLN 1: (2000) 2 SLR 686) and (3) Gangahanume Gowda Vs. Karnataka Agro Industries Corpn. Ltd., reported in AIR 2003 SC 1526. Learned counsel for the respondent is unable to dispute the aforesaid proposition.

7.0 In the result, the petition succeeds, and it is accordingly allowed. The order dated 27.2.2003 passed by the respondent no.2 is hereby quashed and set aside. The respondents are directed to compute the pensionary benefits payable to the petitioner with effect from 1st February 1996, within a period of four months from the date of receipt of writ of this Court,and start making regular payment of pension with effect from the date of such determination. On the facts and circumstances of the case, the Respondents are directed to pay interest at the rate of 9% on the arrears in question from 1st January 2002 till the date of payment. In case the

payment is not made within the stipulated period as mentioned above, the interest on the said amount from the date thereafter shall be recovered from the concerned officer who has delayed the payment to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]
ar